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AMENDED IN SENATE APRIL 13, 2005

## **SENATE BILL**

**No. 362**

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Introduced by ~~Senator Torlakson~~ *Senators Torlakson and Ashburn*

February 17, 2005

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An act to amend Sections 33352, 51222, and 51241 of, and to add Article 3.5 (commencing with Section 33355) to Chapter 3 of Part 20 of, and to add Article 9.5 (commencing with Section 44620) to Chapter 3 of Part 25 of, the Education Code, relating to physical education.

### LEGISLATIVE COUNSEL'S DIGEST

SB 362, as amended, Torlakson. Physical education.

(1) Existing law requires the State Department of Education to exercise general supervision over the physical education courses in elementary and secondary schools of the state. Existing law requires the department to ensure that the data collected through Categorical Program Monitoring (CPM) indicates the actual number of minutes of instruction in physical education actually provided by each school district for the purpose of determining whether each school district is in compliance with the required minimum minutes of instruction

described in (1) above. Existing law repeals those provisions on January 1, 2007.

Existing law requires public schools to provide instruction in physical education for a total period of time of not less than 200 minutes each 10 schooldays to pupils in grades 1 to 6, inclusive. Existing law requires public schools to provide instruction in physical education for a total period of time of not less than 400 minutes each 10 schooldays to pupils in grades 7 to 12, inclusive.

This bill would require the department to ensure that the data collected through CPM indicates the extent to which each school within the jurisdiction of a school district or county office of education performs specified duties regarding the provision of instruction in physical education, including, among others, providing the required minimum minutes of instruction and conducting physical fitness testing, as specified. The bill would require the department to annually submit a report to the Governor and the Legislature that summarizes the data collected through CPM regarding those items and to annually post a summary of that data on the Internet Web site of the department. The bill would delete the existing repeal date and extend the supervisory authority of the department over physical education courses indefinitely.

(2) Existing law establishes various incentive grant programs to provide funds to applicant local educational agencies to encourage those agencies to engage in various educational programs and activities.

This bill would establish the Physical Education Incentive Grants Program, to be administered by the Superintendent of Public Instruction. The bill would require the Superintendent to apportion funding to eligible local educational agencies, as specified, for purposes of hiring teachers with clear single subject credentials in physical education. The bill would require the Superintendent to require the recipient local educational agency to provide a percentage match of its own funds for purposes of the program based on the amount of funds apportioned and the financial means of the local educational agency. The bill would require a representative of the applicant local educational agency to certify that an annual fiscal audit will be conducted and that adequate, accurate records will be kept and to provide the Superintendent with the assurance that grant funds received pursuant to the program will be expended only for the purposes for which they are granted. The bill would require the

Superintendent to require grant recipients to submit annual budget reports, and would authorize the Superintendent to withhold funds in subsequent years if grant funds are expended for purposes other than as awarded. The bill would provide that implementation of this program is contingent upon the appropriation of funds for its purposes in the annual Budget Act or other legislation.

(3) Existing law establishes various professional development and training programs for certificated employees of local educational agencies.

This bill would establish the Physical Education Professional Development Program, to be administered by the Superintendent of Public Instruction. The bill would require the Superintendent, ~~subject to approval by the State Board of Education of a program proposal, as specified,~~ to award incentive funding to applicant local educational agencies to provide teachers who provide instruction in physical education and school administrators with professional development regarding the provision of instruction in physical education, as specified. The bill would require each applicant local educational agency, *in order to receive the incentive funding*, to submit to the ~~state board Superintendent~~ a program proposal, as specified, and would require the ~~state board Superintendent~~ to review and either approve or disapprove those proposals. The bill would require the ~~state board State Department of Education~~, by June 30, 2007, to begin developing rigorous criteria for the approval of those proposals. The bill would require the Superintendent to require each local educational agency that is selected to receive funds to have an annual program audit conducted regarding the use of the funds for purposes of the program. The bill would authorize the Superintendent to withhold funds from a local educational agency based on the results of the audit and would require the ~~state board department~~ to establish a procedure and criteria for an agency or charter school to appeal an adverse audit finding to the ~~state board department~~, as specified. The bill would require the ~~State Department of Education, subject to review and approval by the state board, department~~ to develop and submit to the Legislature an interim report by July 1, 2008, and a final report by February 1, 2012, that details various items regarding the operation and effectiveness of the program, as specified. The bill would provide that implementation of the program is contingent upon the appropriation of funds for its purposes in the annual Budget Act or other ~~legislation~~ *statute*.

(4) Existing law requires public schools to provide instruction in physical education to pupils in grades 7 to 12, inclusive, as specified.

This bill would define a physical education class as one in which each pupil is required to actively participate.

(5) Existing law permits a pupil in grade 10, 11, or 12 to be excused from physical education classes, as provided, in order to participate in automobile driver training.

This bill would delete those provisions.

(6) Existing law, until June 30, 2007, authorizes the governing board of a school district and the office of the county superintendent of schools to grant a permanent exemption from courses in physical education if the pupil complies with one of several criteria, including, among others, that the pupil is 16 years of age or older and has been enrolled in grade 10 for one academic year or longer.

This bill would extend the operation of that authority to June 30, 2009. The bill would delete the authority to grant an exemption with respect to a pupil who is 16 years of age or older and has been enrolled in grade 10 for one academic year or longer. The bill would also make conforming changes.

(7) Existing law, beginning on July 1, 2007, authorizes the governing board of a school district or the office of the county superintendent of schools to grant an exemption from courses in physical education for 2 years, any time during grades 10 to 12, inclusive, to a pupil who passes a physical performance test, as specified.

This bill would instead make that authority operative on July 1, 2009. The bill would require the governing board of a school district to allow a pupil who fails the physical performance test to retake it annually upon the request of the pupil, and would declare the intent of the Legislature that a pupil that fails the test be enrolled in a physical education course designed to lead to the passage by that pupil of the test. By requiring school districts to perform additional duties, the bill would impose a state-mandated local program.

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,

reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) A lack of adequate physical activity and appropriate  
4 nutrition has greatly contributed to the epidemic levels of obesity  
5 found in California.

6 (b) Obesity is a key risk factor associated with a number of  
7 health problems including heart disease, diabetes, some cancers,  
8 hypertension, gallbladder disease, musculoskeletal disorders, and  
9 mental health.

10 (c) According to the State Department of Health Services, the  
11 costs of obesity in California are estimated to equal more than  
12 \$21.7 billion in health care costs, workers' compensation costs,  
13 and lost productivity.

14 (d) According to the State Department of Education, healthy,  
15 active, and well nourished children are more likely to attend  
16 school and are more prepared and motivated to learn.

17 (e) Healthy children are also more likely to grow up to be  
18 healthy adults and are less likely to develop costly and harmful  
19 health problems.

20 (f) California's youth have the potential to advance the  
21 generational change necessary for reversing and preventing the  
22 devastating consequences of such an epidemic.

23 (g) Physical education can provide necessary physical activity  
24 while motivating a child to maintain healthy eating habits and to  
25 engage in regular physical activity as an aspect of one's lifestyle.

26 SEC. 2. Section 33352 of the Education Code is amended to  
27 read:

28 33352. (a) The department shall exercise general supervision  
29 over the courses of physical education in elementary and  
30 secondary schools of the state; advise school officials, school  
31 boards, and teachers in the development and improvement of  
32 their physical education and activity programs; and investigate  
33 the work in physical education in the public schools.

(b) The department shall ensure that the data collected through Categorical Program Monitoring indicates the extent to which each school within the jurisdiction of a school district or county office of education does all of the following that are applicable to the school:

(1) Provide instruction in physical education for a total period of time of not less than 200 minutes each 10 schooldays to pupils in grades 1 to 6, inclusive, pursuant to subdivision (g) of Section 51210.

(2) Provide instruction in physical education for a total period of time of not less than 400 minutes each 10 schooldays to pupils in grades 7 to 12, inclusive, pursuant to subdivision (a) of Section 51222.

(3) Conduct physical fitness testing of pupils pursuant to Chapter 6 (commencing with Section 60800) of Part 33.

(4) Include the results of physical fitness testing of pupils in the school accountability report card pursuant to subparagraph (C) of paragraph (1) of subdivision (b) of Section 33126.

(5) Offer elective courses in physical education to pupils in any of grades 9 to 12, inclusive.

(6) Offer instruction in physical education to pupils in any of grades 9 to 12, inclusive, that is conducive to health and vigor of body and mind for pupils and that requires each pupil to actively participate.

(7) Offer instruction in physical education to pupils that provides equal opportunities for participation regardless of gender.

(8) Require physical education teachers to hold appropriate teaching credentials issued by the Commission on Teacher Credentialing.

(c) The department annually shall do both of the following:

(1) Submit a report to the Governor and the Legislature that summarizes the data collected through Categorical Program Monitoring regarding the items described in paragraphs (1) to (8), inclusive, of subdivision (b).

(2) Post a summary of the data collected through Categorical Program Monitoring regarding the items described in paragraphs (1) to (8), inclusive, of subdivision (b) on the Internet Web site of the department.

1 SEC. 3. Article 3.5 (commencing with Section 33355) is  
2 added to Chapter 3 of Part 20 of the Education Code, to read:

3  
4 Article 3.5. Physical Education Incentive Grants Program

5  
6 33355. (a) The Physical Education Incentive Grants Program  
7 is hereby established and shall be administered by the  
8 Superintendent.

9 (b) It is the intent of the Legislature in enacting this article to  
10 provide grants to local educational agencies such as school  
11 districts, county offices of education, and charter schools that  
12 maintain kindergarten or any of grades 1 to 8, inclusive, for  
13 purposes of enhancing the quality of instruction in physical  
14 education and to assist schools in this goal by providing incentive  
15 grants for the hiring of additional physical education specialists.

16 33356. (a) From funds appropriated in the annual Budget Act  
17 for purposes of this article, the Superintendent shall do all of the  
18 following:

19 (1) Apportion funding to eligible local educational agencies in  
20 an amount based on need and the size of the local educational  
21 agency.

22 (2) Assign priority for funding to local educational agencies  
23 based on need.

24 (3) Require the recipient local educational agency to provide a  
25 percentage match of its own funds for purposes of this article  
26 based on the amount of funds apportioned and the financial  
27 means of the local educational agency.

28 (b) Funds apportioned pursuant to this article shall be used for  
29 purposes of hiring teachers who hold clear single subject  
30 credentials in physical education.

31 (c) Funds apportioned pursuant to this article shall supplement  
32 and not supplant existing expenditures by the local educational  
33 agencies receiving grants.

34 (d) Local educational agencies that are selected to receive  
35 grants pursuant to this article are eligible to continue to receive  
36 grant awards on an ongoing basis in subsequent fiscal years to  
37 the extent that they continue to use the funds awarded according  
38 to subdivisions (b) and (c).

39 (e) To be eligible to receive a grant under this subdivision, a  
40 representative of the applicant local educational agency shall

1 certify that an annual program audit will be conducted and that  
2 adequate, accurate records will be maintained. In addition, each  
3 applicant shall provide the Superintendent with the assurance that  
4 grant funds received pursuant to this article will be expended  
5 only for the purposes for which they are granted. The  
6 Superintendent shall require grant recipients to submit annual  
7 budget reports, and the Superintendent may withhold funds in  
8 subsequent years if grant funds are expended for purposes other  
9 than as awarded.

10 (f) The implementation of this article is contingent upon the  
11 appropriation of funds for its purposes in the annual Budget Act  
12 or other legislation.

13 SEC. 4. Article 9.5 (commencing with Section 44620) is  
14 added to Chapter 3 of Part 25 of the Education Code, to read:

15  
16 Article 9.5. The Physical Education Professional  
17 Development Program  
18

19 44620. (a) The Physical Education Professional  
20 Development Program is hereby established, and shall be  
21 administered by the Superintendent.

22 (b) It is the intent of the Legislature in enacting this article to  
23 provide professional development in physical education for  
24 school administrators and for teachers who provide instruction in  
25 physical education.

26 (c) A local educational agency, including a charter school that  
27 provides instruction in kindergarten or any of grades 1 to 12,  
28 inclusive, is eligible to apply for funds appropriated for purposes  
29 of this article.

30 44621. (a) From funds appropriated for purposes of this  
31 article, the Superintendent, subject to approval by the state board  
32 of the program proposal pursuant to Section 44622, shall award  
33 incentive funding to applicant local educational agencies to  
34 provide teachers who provide instruction in physical education  
35 with professional development that includes, but is not limited to,  
36 development and enhancement of all of the following:

37 (1) Knowledge of physical education based on the model  
38 content standards in physical education adopted by the state  
39 board pursuant to Section 60605.2 and other state laws and  
40 regulations regarding the provision of instruction in physical



1 education, including physical fitness standards adopted by the  
2 state board and physical fitness testing pursuant to Chapter 6  
3 (commencing with Section 60800) of Part 33.

4 (2) Instructional and assessment strategies to improve pupil  
5 learning and the assessment of pupils in physical education.

6 (3) Communication and motivation techniques to motivate  
7 pupils to desire higher levels of physical activity and physical  
8 fitness.

9 (4) Risk and safety management skills related to the provision  
10 of instruction in physical education.

11 (b) From funds appropriated for purposes of this article, the  
12 Superintendent, subject to approval by the state board of the  
13 program proposal pursuant to Section 44622, shall award  
14 incentive funding to applicant local educational agencies to  
15 provide school administrators with professional development that  
16 includes, but is not limited to, development and enhancement of  
17 all of the following:

18 (1) Knowledge of state laws and regulations regarding the  
19 provision of instruction in physical education and physical fitness  
20 testing pursuant to Chapter 6 (commencing with Section 60800)  
21 of Part 33.

22 (2) Knowledge of principles of teaching and learning in  
23 physical education.

24 (3) Knowledge and skills for observing instruction in physical  
25 education and for providing assessments to teachers.

26 (4) Knowledge and skills in assessment and evaluation of  
27 pupil learning, program development, and implementation of  
28 instruction in physical education.

29 (5) Knowledge of resources available for quality physical  
30 education instructional programs.

31 (6) Appreciation for the value of physical education as part of  
32 the complete educational experience of a pupil.

33 (c) (1) The Superintendent shall develop a procedure for  
34 assigning priority for funding to applicant local educational  
35 agencies and charter schools.

36 (2) Notwithstanding the procedure developed pursuant to  
37 paragraph (1), in any fiscal year in which funding is inadequate  
38 to award funds to all eligible local educational agencies, the  
39 Superintendent shall use all of the following criteria for purposes  
40 of assigning priority for funding:

1 (A) First, to local educational agencies with a high percentage  
2 of pupils that do not satisfy the physical fitness testing  
3 requirements pursuant to Chapter 6 (commencing with Section  
4 60800) of Part 33.

5 (B) Second, to local educational agencies with schools with  
6 high poverty levels, as determined by the percentage of pupils  
7 eligible for free or reduced price meals.

8 (C) Third, to local educational agencies with a high number of  
9 teachers providing instruction in physical education who are  
10 either new to the teaching profession or who do not hold clear  
11 credentials.

12 (d) The implementation of this article is contingent upon the  
13 appropriation of funds for its purposes in the annual Budget Act  
14 or other statute.

15 44622. (a) To receive incentive funding pursuant to this  
16 article, a local educational agency shall submit a program  
17 proposal to the ~~state board~~ *Superintendent*. The program proposal  
18 shall contain an expenditure plan and shall specify the manner in  
19 which the proposed professional development program for which  
20 funding is being requested addresses each of the elements  
21 described in paragraphs (1) to (4), inclusive of subdivision (a) of,  
22 and paragraphs (1) to (6), inclusive, of subdivision (b) of, Section  
23 44621.

24 (b) The ~~state board~~ *Superintendent* shall review and either  
25 approve or disapprove the plan of each applicant local  
26 educational agency submitted pursuant to subdivision (a).

27 (c) Professional development programs offered pursuant to  
28 this article shall be for a period of time of no less than 20 hours  
29 of initial training and shall involve a minimum of 20 hours of  
30 additional, intensive and individualized professional  
31 development and support for a combined total of 40 hours of  
32 professional development in accordance with subdivisions (a)  
33 and (b) of Section 44621. The additional 20 hours of professional  
34 development and support may be completed over a period of up  
35 to two years once the initial 20 hours of professional  
36 development commences. To the extent practicable, the  
37 professional development shall be held conducted of the regular  
38 school day.

39 44623. (a) By June 30, 2007, the ~~state board~~ *department*  
40 shall begin developing rigorous criteria for the approval of

1 professional development providers to provide professional  
2 development pursuant to this article. ~~The state board~~ *department*  
3 shall develop the criteria in consultation with individuals or  
4 groups with expertise in the elements described in paragraphs (1)  
5 to (4), inclusive of subdivision (a) of, and paragraphs (1) to (6),  
6 inclusive, of subdivision (b) of, Section 44621.

7 (b) ~~The state board~~ *Superintendent* shall approve only  
8 providers that use curriculum and materials that are consistent  
9 with the most recent model content standards in physical  
10 education adopted by the state board pursuant to Section 60605.2  
11 and with the most recent curriculum frameworks in physical  
12 education for kindergarten and grades 1 to 12, inclusive, adopted  
13 by the state board.

14 (c) A local educational agency or charter school that receives  
15 funding pursuant to this article shall only use a provider  
16 approved by the state board pursuant to subdivisions (a) and (b)  
17 to provide professional development pursuant to Section 44621.

18 (d) The Commission on Teacher Credentialing may approve a  
19 program developed pursuant to this article as meeting a portion  
20 of the requirements to fulfill the continuing education required  
21 for the renewal of a credential pursuant to Section 44277.

22 44624. (a) Incentive funding for purposes of this article may  
23 not exceed two thousand five hundred dollars (\$2,500) per  
24 teacher for the first 20 hours of professional development and an  
25 additional two thousand five hundred dollars (\$2,500) at the  
26 completion of the 20 hours of additional professional  
27 development and support.

28 (b) The Superintendent shall require each local educational  
29 agency that is selected to receive funds pursuant to this article to  
30 have an annual program audit conducted regarding the use of the  
31 funds for purposes of providing professional development in  
32 accordance with this article by the recipient local educational  
33 agency.

34 (c) If it is determined pursuant to a program audit that a  
35 participating local educational agency failed to provide  
36 professional development pursuant to this article to all school  
37 administrators and teachers for whom it received funding, the  
38 Superintendent shall withhold two thousand five hundred dollars  
39 (\$2500) from the next monthly principal apportionment of the

1 local educational agency for each administrator or teacher who  
2 did not receive professional development.

3 (d) ~~The state board~~ *Superintendent* shall establish a procedure  
4 and criteria for local education agencies to appeal to the ~~state~~  
5 ~~board department~~ an audit finding as described in subdivision  
6 (b). ~~The state board~~ *Superintendent* may reduce or eliminate the  
7 amount to be withheld pursuant to subdivision (b).

8 44625. (a) By July 1, 2008, the department, ~~subject to review~~  
9 ~~and approval by the state board~~, shall develop and submit to the  
10 Legislature an interim report regarding the program established  
11 pursuant to this article. The interim report shall, at a minimum,  
12 detail all of the following:

13 (1) The number of teachers and school administrators who  
14 received professional development pursuant to this article.

15 (2) The entities that received funds for the purpose of offering  
16 training pursuant to this article and the number of teachers and  
17 school administrators to whom the entities have provided  
18 professional development.

19 (3) Information detailing the effectiveness of the program  
20 established pursuant to this article. This information, at a  
21 minimum, shall incorporate survey data concerning program  
22 effectiveness that has been gathered from program participants.

23 (4) Information detailing the retention rate of school  
24 administrators who participated in professional development  
25 offered pursuant to this article.

26 (b) By February 1, 2012, the department, ~~subject to review and~~  
27 ~~approval by the state board~~, shall develop and submit to the  
28 Legislature a final report regarding the program established  
29 pursuant to this article. The final report shall, at a minimum,  
30 detail the items described in paragraphs (1) to (4), inclusive, of  
31 subdivision (a).

32 SEC. 5. Section 51222 of the Education Code is amended to  
33 read:

34 51222. (a) A pupil, except a pupil excused or exempted  
35 pursuant to Section 51241, shall be required to attend a physical  
36 education class for a total period of time of not less than 400  
37 minutes each 10 schooldays. A physical education class is one in  
38 which each pupil is required to actively participate.

39 (b) The governing board of a school district that maintains a  
40 high school and that elects to exempt a pupil from required

1 attendance in physical education classes pursuant to subdivision  
2 (b) of Section 51241 shall offer that pupil a variety of elective  
3 physical education classes of not less than 400 minutes each 10  
4 schooldays.

5 SEC. 6. Section 51241 of the Education Code, as amended by  
6 Section 2 of Chapter 459 of the Statutes of 2003, is amended to  
7 read:

8 51241. (a) The governing board of a school district or the  
9 office of the county superintendent of schools of a county may  
10 grant temporary exemption to a pupil from courses in physical  
11 education, if the pupil is either of the following:

12 (1) Ill or injured and a modified program to meet the needs of  
13 the pupil cannot be provided.

14 (2) Enrolled for one-half, or less, of the coursework normally  
15 required of full-time pupils.

16 (b) The governing board of a school district or the office of the  
17 county superintendent of schools may, with the consent of a  
18 pupil, grant the pupil exemption from courses in physical  
19 education for two years any time during grades 10 to 12,  
20 inclusive.

21 (c) The governing board of a school district or the office of the  
22 county superintendent of schools may grant permanent  
23 exemption from courses in physical education if the pupil  
24 complies with any one of the following:

25 (1) Is enrolled as a postgraduate pupil.

26 (2) Is enrolled in a juvenile home, ranch, camp, or forestry  
27 camp school where pupils are scheduled for recreation and  
28 exercise pursuant to the requirements of Section 4346 of Title 15  
29 of the California Code of Regulations.

30 (d) A pupil exempted under subdivision (b) may not be  
31 permitted to attend fewer total hours of courses and classes if he  
32 or she elects not to enroll in a physical education course than he  
33 or she would have attended if he or she had elected to enroll in a  
34 physical education course.

35 (e) Notwithstanding any other law, the governing board of a  
36 school district may administer to pupils in grades 10 to 12,  
37 inclusive, the physical performance test required in 9th grade  
38 pursuant to Section 60800.

(f) This section shall remain in effect only until June 30, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before June 30, 2009, deletes or extends that date.

SEC. 7. Section 51241 of the Education Code, as added by Section 3 of Chapter 459 of the Statutes of 2003, is amended to read:

51241. (a) The governing board of a school district or the office of the county superintendent of schools of a county may grant temporary exemption to a pupil from courses in physical education, if the pupil is either of the following:

(1) Ill or injured and a modified program to meet the needs of the pupil cannot be provided.

(2) Enrolled for one-half, or less, of the coursework normally required of full-time pupils.

(b) (1) The governing board of a school district or the office of the county superintendent of schools may, with the consent of a pupil, if the pupil has passed the physical performance test administered in the 9th grade pursuant to Section 60800, grant the pupil exemption from courses in physical education for two years any time during grades 10 to 12, inclusive.

(2) Pursuant to Sections 51210, 51220, and 51222, physical education is required to be offered to all pupils, and schools are, therefore, required to provide adequate facilities and instructional resources for that instruction. In this regard, paragraph (1) shall be implemented in a manner that does not create a new program or impose a higher level of service on a local educational agency. Paragraph (1) does not mandate any overall increase in staffing or instructional time because, pursuant to subdivision (d), pupils are not permitted to attend fewer total hours of class if they do not enroll in physical education. Paragraph (1) does not mandate any new costs because any additional physical education instruction that a local educational agency provides may be accomplished during the existing instructional day, with existing facilities. Paragraph (1) does not prevent a local educational agency from implementing any other temporary or permanent exemption authorized by this section.

(c) The governing board of a school district or the office of the county superintendent of schools may grant permanent exemption from courses in physical education if the pupil complies with either of the following:

1 (1) Is enrolled as a postgraduate pupil.

2 (2) Is enrolled in a juvenile home, ranch, camp, or forestry  
3 camp school where pupils are scheduled for recreation and  
4 exercise pursuant to the requirements of Section 4346 of Title 15  
5 of the California Code of Regulations.

6 (d) A pupil exempted under paragraph (1) of subdivision (b)  
7 may not attend fewer total hours of courses and classes if he or  
8 she elects not to enroll in a physical education course than he or  
9 she would have attended if he or she had elected to enroll in a  
10 physical education course.

11 (e) Notwithstanding any other law, the governing board of a  
12 school district shall give a pupil in grades 10 to 12, inclusive,  
13 who fails to pass the physical performance test required in 9th  
14 grade pursuant to Section 60800 the opportunity, annually and  
15 upon the request of the pupil, to retake the test. A pupil who  
16 passes this physical performance test in any of grades 10 to 12,  
17 inclusive, is eligible for an exemption pursuant to subdivision  
18 (b).

19 (f) It is the intent of the Legislature that a pupil who fails to  
20 pass the physical performance test required by Section 60800 and  
21 who is otherwise required to enroll in a course of physical  
22 education shall be enrolled in a physical education course  
23 designed to lead to that pupil's passage of the physical  
24 performance test.

25 (g) This section shall become operative on July 1, 2009.

26 SEC. 8. If the Commission on State Mandates determines that  
27 this act contains costs mandated by the state, reimbursement to  
28 local agencies and school districts for those costs shall be made  
29 pursuant to Part 7 (commencing with Section 17500) of Division  
30 4 of Title 2 of the Government Code.